

Title 39-A: WORKERS' COMPENSATION

Chapter 1: GENERAL PROVISIONS

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Maine Revised Statutes
Title 39-A: WORKERS' COMPENSATION
Chapter 1: GENERAL PROVISIONS

§101. SHORT TITLE

This Part may be known and cited and referred to in proceedings and agreements under this Part as the "Maine Workers' Compensation Act of 1992." [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

1991, c. 885, §A8 (NEW). 1991, c. 885, §§A9-11 (AFF).

§102. DEFINITIONS

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

1. After-tax average weekly wage. "After-tax average weekly wage" means average weekly wage, as defined in subsection 4, reduced by the prorated weekly amount that would have been paid under the Federal Insurance Contributions Act, 26 United States Code, Sections 3101 to 3126, state income tax and federal income tax calculated on an annual basis, using as the number of exemptions the disabled employee's dependents plus the employee, and without excess itemized deductions. Effective January 1, 1993 and each January 1st until and including January 1, 2012, the applicable federal and state laws in effect on the preceding July 1st are used in determining the after-tax weekly wage. Each December 1st until and including December 1, 2011, the board shall publish tables of the average weekly wage and 80% of after-tax average weekly wage that will take effect on the following January 1st. These tables are conclusive for the purpose of converting an average weekly wage into 80% of after-tax average weekly wage.

[2013, c. 63, §1 (AMD) .]

2. Agriculture. "Agriculture" means the operation of farm premises, including:

A. The planting, cultivating, producing, growing and harvesting of agricultural or horticultural commodities on those premises; [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. The raising of livestock and poultry on those premises; [2013, c. 111, §1 (AMD); 2013, c. 111, §2 (AFF).]

C. Any work performed as an incident to or in conjunction with these farm operations, including the packing, drying and storing of these commodities for market, if these operations:

(1) Are incident to or in conjunction with growing and harvesting farm operations of the same employer; and

(2) Are not provided as a service for other farm operations or employers; or [2013, c. 111, §1 (AMD); 2013, c. 111, §2 (AFF).]

D. Equine activity, as defined in Title 7, section 4101, subsection 5. [2013, c. 111, §1 (NEW); 2013, c. 111, §2 (AFF).]

[2013, c. 111, §1 (AMD); 2013, c. 111, §2 (AFF) .]

3. Aquaculture. "Aquaculture" means the commercial production of cultured fish, shellfish, seaweed or other marine plants for human and animal consumption, including:

A. All cultivating activities occurring at hatcheries or nurseries, from the egg, larval or spore stages to the transfer of the product to a growing site; and [1993, c. 209, §1 (NEW).]

B. All cultivating activities occurring on water, from the receipt of fish, shellfish, seaweed or other marine plants from onshore facilities to the delivery of harvested products to onshore facilities for processing. [1993, c. 209, §1 (NEW).]

[1993, c. 209, §1 (AMD) .]

4. Average weekly wages or average weekly wages, earnings or salary. The term "average weekly wages" or "average weekly wages, earnings or salary" is defined as follows.

A. "Average weekly wages, earnings or salary" of an injured employee means the amount that the employee was receiving at the time of the injury for the hours and days constituting a regular full working week in the employment or occupation in which the employee was engaged when injured; except that this does not include any reasonable and customary allowance given to the employee by the employer for the purchase, maintenance or use of any chainsaws or skidders used in the employee's occupation if that employment or occupation had continued on the part of the employer for at least 200 full working days during the year immediately preceding that injury. For purposes of this paragraph, "reasonable and customary allowance" is the allowance provided in a negotiated contract between the employee and the employer or, if not provided for by a negotiated contract, an allowance determined by the Department of Labor. In the case of piece workers and other employees whose wages during that year have generally varied from week to week, wages are averaged in accordance with the method provided under paragraph B. [1995, c. 560, Pt. G, §21 (AMD); 1995, c. 560, Pt. G, §29 (AFF).]

B. When the employment or occupation did not continue pursuant to paragraph A for 200 full working days, "average weekly wages, earnings or salary" is determined by dividing the entire amount of wages or salary earned by the injured employee during the immediately preceding year by the total number of weeks, any part of which the employee worked during the same period. The week in which employment began, if it began during the year immediately preceding the injury, and the week in which the injury occurred, together with the amounts earned in those weeks, may not be considered in computations under this paragraph if their inclusion would reduce the average weekly wages, earnings or salary. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. Notwithstanding paragraphs A and B, the average weekly wage of a seasonal worker is determined by dividing the employee's total wages, earnings or salary for the prior calendar year by 52.

(1) For the purposes of this paragraph, the term "seasonal worker" does not include any employee who is customarily employed, full time or part time, for more than 26 weeks in a calendar year. The employee need not be employed by the same employer during this period to fall within this exclusion.

(2) Notwithstanding subparagraph (1), the term "seasonal worker" includes, but is not limited to, any employee who is employed directly in agriculture or in the harvesting or initial hauling of forest products. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

D. When the methods set out in paragraph A, B or C of arriving at the average weekly wages, earnings or salary of the injured employee can not reasonably and fairly be applied, "average weekly wages" means the sum, having regard to the previous wages, earnings or salary of the injured employee and of other employees of the same or most similar class working in the same or most similar employment in the same or a neighboring locality, that reasonably represents the weekly earning capacity of the injured employee in the employment in which the employee at the time of the injury was working. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

E. When the employee is employed regularly in any week concurrently by 2 or more employers, for one of whom the employee works at one time and for another of whom the employee works at another time, the employee's average weekly wages are computed as if the wages, earnings or salary received by the employee from all such employers were wages, earnings or salary earned in the employment of the employer for whom the employee was working at the time of the injury. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

F. When the employer has paid the employee a sum to cover any special expense incurred by the employee by the nature of the employee's employment, the sum paid is not reckoned as part of the employee's wages, earnings or salary. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

G. The fact that an employee has suffered a previous injury or received compensation for a previous injury does not preclude compensation for a later injury or for death; but, in determining the compensation for a later injury or death, the employee's average weekly wages are the sum that will reasonably represent the employee's weekly earning capacity at the time of the later injury in the employment in which the employee was working at that time, and are computed according to and subject to the limitations of this subsection. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

H. "Average weekly wages, earnings or salary" does not include any fringe or other benefits paid by the employer that continue during the disability. Any fringe or other benefit paid by the employer that does not continue during the disability must be included for purposes of determining an employee's average weekly wage to the extent that the inclusion of the fringe or other benefit will not result in a weekly benefit amount that is greater than 2/3 of the state average weekly wage at the time of injury. The limitation on including discontinued fringe or other benefits only to the extent that such inclusion does not result in a weekly benefit amount greater than 2/3 of the state average weekly wage at the time of injury does not apply if the injury results in the employee's death. [2003, c. 437, §1 (AMD).]

[2003, c. 437, §1 (AMD) .]

5. Board; board member. "Board" means the Workers' Compensation Board created by section 151 and includes a designee of the board. "Board member" means any member of the board, including the executive director.

[2003, c. 608, §4 (AMD) .]

6. Community. "Community" means the area within a 75-mile radius of an employee's residence or the actual distance from an employee's normal work location to the employee's residence at the time of an employee's injury, whichever is greater.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

7. Compensation payment scheme. "Compensation payment scheme" means the procedure whereby an employer is required to provide compensation or other benefits under this Act to an employee. "Compensation payment scheme" includes a decree of the board, payment under the early-pay system provided in former Title 39, section 51-B and, in case of injuries prior to January 1, 1984, an approved agreement.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

8. Dependent. "Dependent" means a member of an employee's family or that employee's next of kin who is wholly or partly dependent upon the earnings of the employee for support at the time of the injury. The following persons are conclusively presumed to be wholly dependent for support upon a deceased employee:

A. A spouse of the deceased employee who was living with the employee at the time of the employee's death, who was living apart from the employee for a justifiable cause or because the spouse had been deserted by the employee or who was actually dependent in any way upon the employee at the time of the injury. A spouse living apart from the employee must produce a court order or other competent evidence as to separation and actual dependency; and [2013, c. 63, §2 (RPR).]

B. [2013, c. 63, §3 (RP).]

C. A child, including an adopted child or a stepchild, under the age of 18 years, or under the age of 23 years if a student or over the age of 18 years but physically or mentally incapacitated from earning, who is dependent upon the parent with whom the dependent is living or upon whom the dependent is actually dependent in any way at the time of the injury to the parent, there being no surviving dependent parent. For the purposes of this paragraph, "child" includes any dependent posthumous child whose mother is not living. If there is more than one child dependent, the compensation must be divided equally among them.

For the purposes of this paragraph, the term "student" means a person regularly pursuing a full-time course of study or training at an institution that is:

- (1) A school, college or university operated or directly supported by the United States or by any state or local government or political subdivision thereof;
- (2) A school, college or university that has been accredited by a state or by a state-recognized or nationally recognized accrediting agency or body;
- (3) A school, college or university not accredited pursuant to subparagraph (2) but whose credits are accepted, on transfer, for credit on the same basis as if transferred from an accredited institution by not fewer than 3 institutions accredited pursuant to subparagraph (2); or
- (4) An additional type of educational or training institution as defined by the board, but not after the dependent reaches the age of 23 or has completed 4 years of education beyond the high school level, except that, when the dependent's 23rd birthday occurs during a semester or other enrollment period, the dependent continues to be considered a student until the end of the semester or other enrollment period. A child is not deemed to have ceased to be a student during any interim between school years if the interim does not exceed 5 months and if the dependent shows to the satisfaction of the board that the dependent has a bona fide intention of continuing to pursue a full-time course of education or training during the semester or other enrollment period immediately following the interim or during periods of reasonable duration during which, in the judgment of the board, the dependent is prevented by factors beyond the dependent's control from pursuing the dependent's education. A child is not deemed to be a student under this Act during a period of service in the Armed Forces of the United States. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

In all other cases, questions of total or partial dependency must be determined in accordance with the fact as the fact was at the time of the injury. If there is more than one person wholly dependent, the compensation must be divided equally among them and persons partly dependent, if any, are not entitled to a part of the compensation during the period in which compensation is paid to persons wholly dependent. If there is no one wholly dependent and more than one person who is partly dependent, the compensation must be divided among them according to the relative extent of their dependency.

[2013, c. 63, §§2, 3 (AMD).]

9. Dependent of another person. For purposes of the payment or the termination of compensation under section 215, "dependent of another person" means a widow or widower of a deceased employee that over 1/2 of that person's support during a calendar year was provided by the other person.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

10. Design professional. "Design professional" means:

A. An architect, professional engineer, landscape architect, land surveyor, geologist or soil scientist licensed to practice that profession in the State in accordance with Title 32; or [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. Any corporation or partnership, professional or general, that employs one or more of any of the professionals described in paragraph A and whose sole purpose is the rendering of professional services practiced by any professional described in paragraph A. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

11. Employee. The term "employee" is defined as follows.

A. "Employee" includes officials of the State and officials of counties, cities, towns, water districts and all other quasi-public corporations of a similar character, every duly elected or appointed executive officer of a private corporation other than a charitable, religious, educational or other nonprofit corporation, and every person in the service of another under any contract of hire, express or implied, oral or written, except:

(1) Persons engaged in maritime employment or in interstate or foreign commerce who are within the exclusive jurisdiction of admiralty law or the laws of the United States, except that this section may not be construed to exempt from the definition of "employee" a person who is employed by the State and is thereby barred by the State's sovereign immunity from bringing a claim against that person's employer under admiralty law or other laws of the United States for claims that are otherwise cognizable under this Act;

(2) Firefighters, including volunteer firefighters who are active members of a volunteer fire association as defined in Title 30-A, section 3151; volunteer emergency medical services persons as defined in Title 32, section 83, subsection 12; and police officers are employees within the meaning of this Act. In computing the average weekly wage of an injured volunteer firefighter or volunteer emergency services person, the average weekly wage must be taken to be the earning capacity of the injured employee in the occupation in which the employee is regularly engaged. Employers who hire workers within this State to work outside the State may agree with these workers that the remedies under this Act are exclusive as regards injuries received outside this State arising out of and in the course of that employment; and all contracts of hiring in this State, unless otherwise specified, are presumed to include such an agreement. Any reference to an employee who has been injured must, when the employee is dead, include the employee's legal representatives, dependents and other persons to whom compensation may be payable;

(3) Notwithstanding any other provisions of this Act, any charitable, religious, educational or other nonprofit corporation that may be or may become an assenting employer under this Act may cause any duly elected or appointed executive officer to be an employee of the corporation by specifically including the executive officer among those to whom the corporation secures payment of compensation in conformity with chapter 5; and the executive officer must remain an employee of the corporation under this Act while such payment is so secured. With respect to any corporation that secures compensation by making a contract of workers' compensation insurance, specific inclusion of the executive officer in the contract causes the officer to be an employee of the corporation under this Act;

(4) Except for persons engaged in harvesting of forest products, any person who, in a written statement to the board, waives all the benefits and privileges provided by the workers' compensation laws, provided that the board has found that person to be a bona fide owner of at least 20% of the outstanding voting stock of the corporation by which that person is employed or a shareholder of the professional corporation by which that person is employed and that this waiver was not a prerequisite condition to employment. For the purposes of this subparagraph, the term "professional corporation" means a domestic or foreign professional corporation as defined in Title 13, section 723.

Any person may revoke or rescind that person's waiver upon 30 days' written notice to the board and that person's employer. The parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child of a person who has made a waiver under the previous sentence may state, in writing, that the parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child waives all the benefits and privileges provided by the workers' compensation laws if the board finds that the waiver is not a prerequisite condition to employment and if the parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child is employed by the same corporation that employs the person who has made the first waiver;

(5) Except for persons engaged in harvesting of forest products, the parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child of a sole proprietor who is employed by that sole proprietor or the parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child of a partner who is employed by the partnership of that partner or the parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child of a member of a limited liability company who is employed by that limited liability company may state, in writing, that the parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child waives all the benefits and privileges provided by the workers' compensation laws if the board finds that the waiver is not a prerequisite condition to employment;

(6) Employees of an agricultural employer when harvesting 150 cords of wood or less each year from farm wood lots, provided that the employer is covered under an employer's liability insurance policy as required in subsection 17;

(7) An independent contractor;

(8) Except as otherwise provided in sections 105-A and 401, if a person employs an independent contractor, any employee of the independent contractor is not considered an employee of that person for the purposes of this Act. The person who employs an independent contractor is not responsible for providing workers' compensation insurance covering the payment of compensation and benefits to the employees of the independent contractor. An insurance company may not charge a premium to any person for any employee excluded by this subparagraph; or

(9) A state or municipal employee while the employee is on assignment as a certified disaster service volunteer for the American Red Cross pursuant to Title 5, section 19-B or Title 30-A, section 2705. Duties performed while on a volunteer disaster relief assignment for the American Red Cross may not be considered a work assignment by a state agency or municipality. [2009 , c. 452 , § 3 (AMD) .]

B. "Employee" includes, if the person elects to be personally covered by this Title, any person who regularly operates a business or practices a trade, profession or occupation, whether individually or in partnership or association with other persons or as a member of a limited liability company, whether or not the person hires employees. Such a person shall elect personal coverage by insuring and keeping insured the payment of compensation and other benefits under a workers' compensation insurance policy. The insurance policy must clearly indicate the intention of the parties to provide coverage for the person electing to be personally covered. The insurance company shall file with the board notice, in such form as the board approves, of the issuance of any workers' compensation policy to a person electing personal coverage. That insurance may not be cancelled within the time limited in that policy for its expiration until at least 30 days after mailing a notice of the cancellation of that insurance to the board and the person electing personal coverage. In the event that the person electing personal coverage has obtained a workers' compensation insurance policy from another insurance company, and that insurance becomes effective prior to the expiration of the 30 days, cancellation is effective as of the effective date of the other insurance. The Superintendent of Insurance is authorized to review for approval, at the superintendent's discretion, an appropriate classification for this class of persons and a reasonable rate. [2001 , c. 518 , § 2 (AMD) .]

B-1. "Employee" includes any person engaged in harvesting forest products, except the following persons:

(1) A person who contracts directly with the landowner if the person meets the criteria for obtaining a certificate of independent status or a predetermination of independent contractor status and:

- (a) Performs all of the wood harvesting alone;
- (b) Performs all of the wood harvesting alone or with the assistance of one or more of the following persons whose relationship with the person is that of spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1, parent, sibling, child, niece or nephew;
- (c) Performs all of the wood harvesting alone or with the assistance of one or more other persons all covered by workers' compensation insurance; or
- (d) Performs all of the wood harvesting alone or with the assistance of a partner when a legal partnership exists and neither partner acts as a supervisor of the other;

(2) A spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1, parent, sibling, child, niece or nephew of a person who contracts directly with the landowner to perform all of the wood harvesting alone or with the assistance of one or more of the following: the person's spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1, parent, sibling, child, niece or nephew; or

(3) A partner of a person who contracts directly with the landowner to perform all of the wood harvesting alone or with the assistance of a partner when a legal partnership exists and neither partner acts as a supervisor of the other.

Unless employed by a private employer, a person considered an employee under this paragraph shall obtain personal coverage in the same manner and under the same provisions as a person described in paragraph B who elects to be covered by this Title. [2007, c. 350, §2 (AMD).]

C. "Employee" does not include any person who is otherwise an employee, if the person is injured as a result of the person's voluntary participation in an employer-sponsored athletic event or an employer-sponsored athletic team. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

D. "Employee" does not include a real estate broker or salesperson whose services are performed for remuneration solely by way of commission if the broker or salesperson has signed a contract with the agency indicating the existence of an independent contractor relationship. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

E. "Employee" does not include any person who is a sentenced prisoner in actual execution of a term of incarceration imposed in this State or any other jurisdiction for a criminal offense, except in relation to compensable injuries suffered by the prisoner during incarceration and while the prisoner is:

- (1) A prisoner in a county jail under final sentence of 72 hours or less and is assigned to work outside of the county jail;
- (2) Employed by a private employer;
- (3) Participating in a work release program;
- (5) Employed in a program established under a certification issued by the United States Department of Justice under 18 United States Code, Section 1761;
- (6) Employed while in a supervised community confinement program pursuant to Title 34-A, section 3036-A; or
- (7) Employed while in a community confinement monitoring program pursuant to Title 30-A, section 1659-A. [2013, c. 133, §35 (AMD).]

F. A person certified by the Director of the Maine Emergency Management Agency within the Department of Defense, Veterans and Emergency Management as a qualified search and rescue worker is an employee of the State within the meaning of this Act while that person is performing search and rescue activity at the request of a state, county or local government entity. In computing the average

weekly wage of a certified search and rescue worker injured while performing such activity, the average weekly wage must be taken to be the earning capacity of the injured employee in the occupation in which the employee is regularly engaged. [2003, c. 489, §2 (NEW).]

[2013, c. 133, §35 (AMD) .]

12. Employer. The term "employer" includes:

- A. Private employers; [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]
- B. The State; [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]
- C. Counties; [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]
- D. Cities; [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]
- E. Towns; [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]
- F. Water districts and all other quasi-public corporations of a similar nature; [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]
- G. Municipal school committees; and [2011, c. 678, Pt. C, §9 (AMD).]
- H. [2011, c. 678, Pt. C, §10 (RP).]
- I. Design professionals. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

If the employer is insured, "employer" includes the insurer, self-insurer or group self-insurer unless the contrary intent is apparent from the context or is inconsistent with the purposes of this Act.

[2011, c. 678, Pt. C, §§9, 10 (AMD) .]

12-A. Harvesting forest products. "Harvesting forest products" means to sever and remove standing trees from a forest as a raw material for commercial purposes. "Forest products" has the same meaning as in Title 12, section 8881, subsection 3.

[1999, c. 364, §3 (NEW) .]

13. Independent contractor.

[2011, c. 643, §14 (AFF); 2011, c. 643, §7 (RP) .]

13-A. Independent contractor. A person who performs services for remuneration is presumed to be an employee unless the employing unit proves that the person is free from the essential direction and control of the employing unit, both under the person's contract of service and in fact and the person meets specific criteria. In order for a person to be an independent contractor:

A. The following criteria must be met:

- (1) The person has the essential right to control the means and progress of the work except as to final results;
- (2) The person is customarily engaged in an independently established trade, occupation, profession or business;

- (3) The person has the opportunity for profit and loss as a result of the services being performed for the other individual or entity;
- (4) The person hires and pays the person's assistants, if any, and, to the extent such assistants are employees, supervises the details of the assistants' work; and
- (5) The person makes the person's services available to some client or customer community even if the person's right to do so is voluntarily not exercised or is temporarily restricted; and [2011, c. 643, §8 (NEW); 2011, c. 643, §14 (AFF).]

B. At least 3 of the following criteria must be met:

- (1) The person has a substantive investment in the facilities, tools, instruments, materials and knowledge used by the person to complete the work;
- (2) The person is not required to work exclusively for the other individual or entity;
- (3) The person is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work;
- (4) The parties have a contract that defines the relationship and gives contractual rights in the event the contract is terminated by the other individual or entity prior to completion of the work;
- (5) Payment to the person is based on factors directly related to the work performed and not solely on the amount of time expended by the person;
- (6) The work is outside the usual course of business for which the service is performed; or
- (7) The person has been determined to be an independent contractor by the federal Internal Revenue Service. [2011, c. 643, §8 (NEW); 2011, c. 643, §14 (AFF).]

[2011, c. 643, §8 (NEW); 2011, c. 643, §14 (AFF) .]

14. Insurance company. "Insurance company" means any casualty insurance company or association authorized to do business in this State that may issue policies conforming to subsection 19 and includes the Maine Employers' Mutual Insurance Company. Whenever in this Act relating to procedure the words "insurance company" or "insurer" are used they apply only to cases in which the employer has secured the payment of compensation and other benefits by insuring such payment under a workers' compensation insurance policy, instead of furnishing satisfactory proof of the employer's ability to pay compensation and benefits directly to the employer's employees.

An insurance carrier may not be qualified to issue a workers' compensation insurance policy covering any employees working in this State unless it has and continuously maintains an employee or claims agent within this State empowered to investigate claims arising under this chapter; sign agreements for the payment of compensation as provided by this chapter; and issue drafts or checks in payment of obligations arising under this chapter in amounts of at least \$1,000.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

15. Maximum medical improvement. "Maximum medical improvement" means the date after which further recovery and further restoration of function can no longer be reasonably anticipated, based upon reasonable medical probability.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

16. Permanent impairment. "Permanent impairment" means any anatomic or functional abnormality or loss existing after the date of maximum medical improvement that results from the injury.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

17. Private employer. "Private employer" includes corporations, including professional corporations, partnerships and natural persons. Any agricultural employer otherwise included under this Act is not included when harvesting 150 cords of wood or less each year from farm wood lots, provided that, in order to qualify for this exemption, the employer must be covered by an employer's liability insurance policy with total limits of not less than \$25,000 and medical payment coverage of not less than \$5,000.

[2001, c. 235, §1 (AMD) .]

18. Representatives. "Representatives" includes executors and administrators.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

19. Workers' compensation insurance policy. "Workers' compensation insurance policy" means a policy in such form as the Superintendent of Insurance approves, issued by any stock or mutual casualty insurance company or association that may now or hereafter be authorized to do business in this State, which in substance and effect guarantees the payment of the compensation, medical benefits and expenses of burial provided for, in such installment, at such time or times, and to such person or persons and upon such conditions as in this Act provided. Whenever a copy of a policy is filed, a copy certified by the Superintendent of Insurance is admissible as evidence in any legal proceeding wherein the original would be admissible.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

SECTION HISTORY

1991, c. 885, §A8 (NEW). 1991, c. 885, §§A9-11 (AFF). 1993, c. 209, §1 (AMD). 1995, c. 560, §G21 (AMD). 1995, c. 560, §G29 (AFF). 1997, c. 600, §§3,4 (AMD). 1999, c. 201, §1 (AMD). 1999, c. 201, §2 (AFF). 1999, c. 364, §§1-3 (AMD). 2001, c. 235, §1 (AMD). 2001, c. 490, §1 (AMD). 2001, c. 518, §§1,2 (AMD). 2001, c. 710, §18 (AMD). 2001, c. 710, §19 (AFF). 2003, c. 344, §D27 (AMD). 2003, c. 423, §4 (AMD). 2003, c. 423, §5 (AFF). 2003, c. 437, §1 (AMD). 2003, c. 489, §2 (AMD). 2003, c. 608, §4 (AMD). 2007, c. 350, §§1, 2 (AMD). 2009, c. 142, §17 (AMD). 2009, c. 452, §§3, 4 (AMD). 2009, c. 529, §4 (AMD). 2011, c. 643, §§7, 8 (AMD). 2011, c. 643, §14 (AFF). 2011, c. 678, Pt. C, §§9, 10 (AMD). 2013, c. 63, §§1-3 (AMD). 2013, c. 111, §1 (AMD). 2013, c. 111, §2 (AFF). 2013, c. 133, §35 (AMD).

§103. COMMON-LAW DEFENSES LOST

In an action to recover damages for personal injuries sustained by an employee arising out of and in the course of the employee's employment, or for death resulting from such injuries, it is not a defense to an employer, except as hereinafter specified: [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

1. Employee negligent. That the employee was negligent;

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

2. Fellow employee negligent. That the injury was caused by the negligence of a fellow employee; or

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

3. Employee assumed risk. That the employee has assumed the risk of the injury.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

SECTION HISTORY

1991, c. 885, §A8 (NEW). 1991, c. 885, §§A9-11 (AFF).

§104. APPLICABILITY TO CERTAIN ACTIONS AND EMPLOYERS; EXEMPTIONS

An employer who has secured the payment of compensation in conformity with sections 401 to 407 is exempt from civil actions, either at common law or under sections 901 to 908; Title 14, sections 8101 to 8118; and Title 18-A, section 2-804, involving personal injuries sustained by an employee arising out of and in the course of employment, or for death resulting from those injuries. An employer that uses a private employment agency for temporary help services is entitled to the same immunity from civil actions by employees of the temporary help service as is granted with respect to the employer's own employees as long as the temporary help service has secured the payment of compensation in conformity with sections 401 to 407. "Temporary help services" means a service where an agency assigns its own employees to a 3rd party to work under the direction and control of the 3rd party to support or supplement the 3rd party's work force in work situations such as employee absences, temporary skill shortages, seasonal work load conditions and special assignments and projects. These exemptions from liability apply to all employees, supervisors, officers and directors of the employer for any personal injuries arising out of and in the course of employment, or for death resulting from those injuries. These exemptions also apply to occupational diseases sustained by an employee or for death resulting from those diseases. These exemptions do not apply to an illegally employed minor as described in section 408, subsection 2. [1995, c. 297, §1 (AMD) .]

A design professional acting within the course and scope of providing professional services during the construction, erection or installation of any project or a design professional's employee who is acting within the course and scope of assisting or representing the design professional in the performance of design professional services on or adjacent to the site of the project's construction, erection or installation is immune from liability for any personal injury or death occurring at or adjacent to such a site, if compensation is paid to the injured person or decedent's representative for the injury or death under this Act, and the design professional has no duty under a written contract to assume responsibility for construction site safety. The immunity provided by this section to any design professional does not apply to the negligent preparation of design plans and technical specifications. Except as provided by this section, any waiver, oral or written, express or implied, of the design professional's immunity granted by this section is void and unenforceable as a matter of law. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

SECTION HISTORY

1991, c. 885, §A8 (NEW). 1991, c. 885, §§A9-11 (AFF). 1995, c. 297, §1 (AMD) .

§105. PREDETERMINATION OF INDEPENDENT CONTRACTOR AND CONSTRUCTION SUBCONTRACTOR STATUS

1. Predetermination permitted. A worker, an employer or a workers' compensation insurance carrier, or any together, may apply to the board for a predetermination of whether the status of an individual worker, group of workers or a job classification associated with the employer is that of an employee or an independent contractor.

A. The predetermination by the board creates a rebuttable presumption that the determination is correct in any later claim for benefits under this Act. [1993, c. 120, §1 (AMD); 1993, c. 120, §6 (AFF) .]

B. Nothing in this subsection requires a worker, an employer or a workers' compensation insurance carrier to request predetermination. [2009, c. 569, §1 (AMD).]

[2009, c. 569, §1 (AMD).]

1-A. Predetermination permitted for construction subcontractors. A person, as defined in section 105-A, subsection 1, paragraph E, may apply to the board for a predetermination that the person performs construction work in a manner that would not make the person an employee of a hiring agent, as defined in section 105-A, subsection 1, paragraph D.

A. The predetermination issued by the board pursuant to this subsection is valid for one year and creates a rebuttable presumption that the determination is correct in any later claim for benefits under this Act. [2009, c. 569, §1 (NEW).]

B. Nothing in this subsection requires a person, as defined in section 105-A, subsection 1, paragraph E, a worker, an employer or a workers' compensation insurance carrier to request predetermination. [2009, c. 569, §1 (NEW).]

[2009, c. 569, §1 (NEW).]

2. Premium adjustment. If it is determined that a predetermination does not withstand board or judicial scrutiny when raised in a subsequent workers' compensation claim, then, depending on the final outcome of that subsequent proceeding, either the workers' compensation insurance carrier shall return excess premium collected or the employer shall remit premium subsequently due in order to put the parties in the same position as if the final outcome under the contested claim were predetermined correctly.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

3. Predetermination submission. A party may submit, on forms approved by the board, a request for predetermination regarding the status of a person or job description as an employee, construction subcontractor, as defined in section 105-A, subsection 1, paragraph B, or independent contractor. The request is deemed to have been approved if the board does not deny or take other appropriate action on the submission within 30 days.

[2013, c. 63, §4 (AMD).]

4. Hearing. A hearing, if requested by a party within 10 days of the board's decision on a petition, must be conducted under the Maine Administrative Procedure Act. A ruling by the board or administrative law judge under this section is final and not subject to review by the Superior Court.

[2015, c. 297, §2 (AMD).]

5. Certificate. The board shall provide the petitioning party a certified copy of the decision regarding predetermination that is to be used as evidence at a later hearing on benefits.

[1993, c. 120, §1 (AMD); 1993, c. 120, §6 (AFF).]

6. Rulemaking. The board is authorized to adopt reasonable rules pursuant to the Maine Administrative Procedure Act to implement the intent of this section, which is to afford speedy and equitable predetermination of employee, construction subcontractor, as defined in section 105-A, subsection 1, paragraph B, and independent contractor status.

[2009, c. 569, §1 (AMD).]

SECTION HISTORY

1991, c. 885, §A8 (NEW). 1991, c. 885, §§A9-11 (AFF). 1993, c. 65, §1 (AMD). 1993, c. 120, §1 (AMD). 1993, c. 120, §6 (AFF). 2009, c. 569, §1 (AMD). 2013, c. 63, §§4, 5 (AMD). 2015, c. 297, §2 (AMD).

§105-A. CONSTRUCTION CONTRACTORS

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Construction site" means a location where a structure that is attached or will be attached to real property is constructed, altered or remodeled. [2009, c. 452, §5 (NEW).]

B. "Construction subcontractor" means an independent contractor if the construction subcontractor meets the definition of independent contractor in section 102, subsection 13-A. [2011, c. 643, §14 (AFF); 2011, c. 643, §9 (RPR).]

C. "Construction work" means any part of the construction, alteration or remodeling of a structure, including related landscaping and other site work performed in connection with the performance of such work, but not including surveying, engineering, examination or inspection of a construction site or the delivery of materials to a construction site. [2009, c. 452, §5 (NEW).]

D. "Hiring agent" means a person that hires or contracts with a person to perform construction work, but excludes an owner or occupant of real property who hires a person or persons to perform construction work on that real property. [2009, c. 452, §5 (NEW).]

E. "Person" means:

- (1) An individual;
- (2) A sole proprietor;
- (3) A working member of a partnership;
- (4) A working member of a limited liability company;
- (5) A parent, spouse or child of a sole proprietor, partner or working member of a limited liability company under section 102, subsection 11, paragraph A;
- (6) A working owner or part owner of a corporation; and
- (7) A working shareholder of a professional corporation. [2009, c. 452, §5 (NEW).]

[2009, c. 452, §5 (NEW); 2011, c. 643, §9 (AMD); 2011, c. 643, §14 (AFF).]

2. Status of persons performing construction work. Beginning January 1, 2010, a person performing construction work on a construction site for a hiring agent is presumed to be the employee of the hiring agent for purposes of this Act, unless:

A. The person is a construction subcontractor; or [2009, c. 452, §5 (NEW).]

B. The person owns and operates an item of equipment weighing more than 7,000 pounds and is hired by the hiring agent to operate the equipment on the construction site or to use the equipment to transport materials to or from the site. A person who leases such an item of equipment from a person in the leasing business, other than the hiring agent or an affiliate of the hiring agent, is regarded as the owner for the purposes of this paragraph. A truck with a gross vehicle weight rating greater than 7,000 pounds qualifies as an item of equipment under this paragraph. [2009, c. 452, §5 (NEW).]

[2009, c. 452, §5 (NEW).]

3. Penalties. A person who is required to but fails to secure the payment of compensation with respect to persons deemed to be that person's employees under this section is subject to the penalties under section 324, subsection 3.

[2009, c. 452, §5 (NEW) .]

4. Insurer referral obligation. An insurer that believes in good faith that an insured employer withheld from it or from the State Tax Assessor records of payments to a person deemed to be the person's employee under this section may, but is not required to, refer the insured employer and person to the State Tax Assessor in order that the assessor may take appropriate action, and the insurer enjoys immunity for such actions.

[2009, c. 452, §5 (NEW) .]

5. Stop-work orders. In addition to any penalty imposed under section 324, subsection 3, if after a hearing the executive director determines that a hiring agent or construction subcontractor has knowingly failed to secure the payment to that hiring agent's or construction subcontractor's employees of the compensation provided for by this Act, the executive director or the executive director's designee shall issue a stop-work order pursuant to this subsection. The issuance of a stop-work order by the executive director or the executive director's designee constitutes final agency action.

A. A hiring agent or construction subcontractor must receive at least 3 business days' notice of a hearing regarding a stop-work order. The executive director or the executive director's designee shall stay the issuance of a stop-work order if the hiring agent or subcontractor provides evidence acceptable to the executive director or the executive director's designee that the hiring agent or subcontractor has provided and will continue to provide workers' compensation coverage for the employees of that hiring agent or subcontractor or for the individuals whose status as employees or independent contractors is in question. Providing such coverage may not be evidence at the hearing that the hiring agent or subcontractor was required to do so under this Act. [2009, c. 649, §1 (NEW) .]

B. If the executive director or the executive director's designee finds at the hearing that the hiring agent or construction subcontractor knowingly failed to provide a workers' compensation insurance policy, the executive director or the executive director's designee shall issue a stop-work order effective immediately on the conclusion of the hearing to that hiring agent or construction subcontractor at the construction site at which the executive director or executive director's designee has determined a violation occurred, unless the hiring agent or subcontractor has provided coverage and will continue to do so pursuant to paragraph A. [2009, c. 649, §1 (NEW) .]

C. A stop-work order issued pursuant to this subsection remains in effect until the executive director or the executive director's designee issues an order releasing the stop-work order upon finding that the hiring agent or construction subcontractor has come into compliance with the requirements of this subsection and has paid any penalty assessed under section 324, subsection 3 or has entered into a penalty payment agreement with the board. [2009, c. 649, §1 (NEW) .]

D. A stop-work order issued pursuant to this subsection against a hiring agent or construction subcontractor applies to any successor firm, corporation or partnership of the hiring agent or construction subcontractor in the same manner as it applies to the hiring agent or construction subcontractor. [2009, c. 649, §1 (NEW) .]

E. Any payment or performance bond issued on or in relation to a construction project subject to a stop-work order may not cover any exposure arising out of or during the shutdown of that project. [2009, c. 649, §1 (NEW) .]

For purposes of this subsection, a violation is considered knowing if the hiring agent or construction subcontractor has previously obtained workers' compensation insurance and the insurance has been cancelled or the insurance has not been continued or renewed; has been notified in writing by the board of the need for

workers' compensation insurance; or has had one or more previous violations of the requirement to secure the payment to that hiring agent's or construction subcontractor's employees of the compensation provided for by this Act.

[2009, c. 649, §1 (NEW) .]

6. Insurance coverage information for public construction projects. Insurance coverage information regarding construction subcontractors and independent contractors is controlled by this subsection.

A. At the onset of work on any construction project undertaken by the State, the University of Maine System or the Maine Community College System, the general contractor or designated project construction manager, if any, shall provide to the board a list of all construction subcontractors and independent contractors on the job site and a record of the entity to whom that construction subcontractor or independent contractor is directly contracted and by whom that construction subcontractor or independent contractor is insured for workers' compensation purposes. The list must be posted on the board's publicly accessible website and updated as needed. [2011, c. 403, §3 (NEW).]

B. The board and the Department of Administrative and Financial Services, Bureau of General Services shall cooperate and provide notice to each other regarding the letting of state-funded construction projects and any stop-work order, debarment or other action as either may take or issue. [2011, c. 403, §3 (NEW).]

C. This subsection provides minimum disclosure standards regarding construction subcontractors and independent contractors and does not preclude the contracting agency from setting more rigorous standards for construction work under its jurisdiction. [2011, c. 403, §3 (NEW).]

D. If the general contractor or designated project construction manager fails to provide the board with the information required by paragraph A, that person is subject to a fine of not less than \$250. [2011, c. 403, §3 (NEW).]

[2011, c. 403, §3 (NEW) .]

SECTION HISTORY

2009, c. 452, §5 (NEW). 2009, c. 649, §1 (AMD). 2011, c. 403, §3 (AMD).
2011, c. 643, §9 (AMD). 2011, c. 643, §14 (AFF).

§106. INVALIDITY OF WAIVER OF RIGHTS; CLAIMS NOT ASSIGNABLE

No agreement by an employee, unless approved by the board or by the Commissioner of Labor, to waive the employee's rights to compensation under this Act is valid. No claims for compensation under this Act are assignable or subject to attachment or liable in any way for debt, except for the enforcement of a current support obligation or support arrears pursuant to Title 19-A, chapter 65, subchapter II, article 3 or Title 19-A, chapter 65, subchapter III, or for reimbursement of general assistance pursuant to Title 22, section 4318. [1995, c. 694, Pt. D, §63 (AMD); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1991, c. 885, §A8 (NEW). 1991, c. 885, §§A9-11 (AFF). 1995, c. 694, §D63 (AMD). 1995, c. 694, §E2 (AFF).

§107. LIABILITY OF 3RD PERSONS; ELECTION OF EMPLOYEE; SUBROGATION

When an injury or death for which compensation or medical benefits are payable under this Act is sustained under circumstances creating in some person other than the employer a legal liability to pay damages, the injured employee may, at the employee's option, either claim the compensation and benefits or obtain damages from or proceed at law against that other person to recover damages. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

If the injured employee elects to claim compensation and benefits under this Act, any employer having paid the compensation or benefits or having become liable for compensation or benefits under any compensation payment scheme has a lien for the value of compensation paid on any damages subsequently recovered against the 3rd person liable for the injury. If the employee or the employee's beneficiary fails to pursue the remedy against the 3rd party within 30 days after written demand by the employer, the employer is subrogated to the rights of the injured employee and is entitled to enforce liability in its own name or in the name of the injured party, the accounting for the proceeds to be made on the basis provided. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

If the employee or the employee's beneficiary recovers damages from a 3rd person, the employee shall repay to the employer, out of the recovery against the 3rd person, the benefits paid by the employer under this Act, less the employer's proportionate share of cost of collection, including reasonable attorney's fees. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

If the employer recovers from a 3rd person damages in excess of the compensation and benefits paid or for which the employer has become liable, then any excess must be paid to the injured employee, less a proportionate share of the expenses and cost of actions or collection, including reasonable attorney's fees. Settlement of any such subrogation claims and the distribution of the proceeds therefrom must have the approval of the court in which the subrogation action is pending or to which it is returnable; or if not in suit, of the board. When the court in which the subrogation action is pending or to which it is returnable is in vacation, the judge of the court, or, if the action is pending in or returnable to the Superior Court, any Justice of the Superior Court has the power to approve the settlement of the action and the distribution of the proceeds therefrom. The beneficiary is entitled to reasonable notice and the opportunity to be present in person or by counsel at the approval proceeding. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

1991, c. 885, §A8 (NEW). 1991, c. 885, §§A9-11 (AFF).

§108. PREFERENCE OF CLAIMS

A claim for compensation under this Act and any compensation payment scheme are entitled to a preference over the unsecured debts of the employer to the same amount as the wages of labor are preferred by the laws of this State. Nothing in this section may be construed as impairing any lien that the employee may have acquired. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

1991, c. 885, §A8 (NEW). 1991, c. 885, §§A9-11 (AFF).

§109. COMPILATION OF CLAIMS INFORMATION

A person or entity may not compile for the purpose of distribution and sale listings of employee names and information regarding their claims with the board. Any person or entity found by the board to have violated this section is subject to the remedy provision of the Maine Human Rights Act, Title 5, sections 4613 and 4614. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

1991, c. 885, §A8 (NEW). 1991, c. 885, §§A9-11 (AFF).

§110. COLLECTIVE BARGAINING

1. Permitted options. Subject to the limitation of subsection 2, the board shall recognize as valid and binding a provision in a collective bargaining agreement between an employer and a recognized bargaining agent establishing any of the following:

- A. Alternative dispute resolution systems that may include, but are not limited to, mediation or binding arbitration or the use of mediation and binding arbitration; [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§8-11 (AFF).]
- B. Preferred provider systems for the delivery of health care services or treatment; [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§8-11 (AFF).]
- C. The use of a designated or limited list of independent medical examiners; [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§8-11 (AFF).]
- D. Light-duty, modified job or return-to-work programs; [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§8-11 (AFF).]
- E. Vocational rehabilitation or retraining programs; or [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§8-11 (AFF).]
- F. A 24-hour coverage program. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§8-11 (AFF).]

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§8-11 (AFF) .]

2. Limitation. An agreement pursuant to subsection 1 may not diminish an employee's entitlement to benefits guaranteed by this Act. Any agreement in violation of this subsection is null and void.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§8-11 (AFF) .]

SECTION HISTORY

1991, c. 885, §A8 (NEW). 1991, c. 885, §§A9-11 (AFF).

§111. ALTERNATIVE PROGRAMS

After consultation with the Superintendent of Insurance, the board may approve an agreement entered into between an employer and some or all of the employer's employees to secure the payment of compensation and benefits through an alternative program that is different from but not less than the compensation and benefits provided by this Act. The alternative program may not be approved by the board unless it provides for compensation and benefits in addition to those required by this Act and unless it is for a fixed period of time. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

1991, c. 885, §A8 (NEW). 1991, c. 885, §§A9-11 (AFF).

§112. WORKERS' COMPENSATION COVERAGE FOR FOREST FIREFIGHTERS

Notwithstanding Title 12, section 8901, subsection 2 and Title 12, sections 8902, 8905, 9201, 9202, 9204 and 9205, workers' compensation coverage is provided to forest fire wardens and laborers hired by municipalities for forest fire-fighting activities as follows. [1993, c. 439, §1 (NEW).]

1. Municipal responsibility. The municipality is responsible for workers' compensation costs for injuries that occur while the municipality is in actual control of forest fire-fighting activities.

[1993, c. 439, §1 (NEW) .]

2. State responsibility. The State is responsible for workers' compensation costs for injuries that occur while the State is in actual control of forest fire-fighting activities.

[1993, c. 439, §1 (NEW) .]

For purposes of this section, "actual control" means on-site supervisory responsibility for the entire command structure directing forest fire-fighting activities at the fire scene. A municipality is assumed to be in actual control until the State accepts or takes actual control. [1993, c. 439, §1 (NEW) .]

SECTION HISTORY

1993, c. 439, §1 (NEW) .

§113. EXEMPTION FOR NONRESIDENT EMPLOYEES; RECIPROCITY

1. Exemption. An employee who is employed in another state and that employee's employer are exempt from this Act with respect to that employee while the employee is temporarily in this State doing work for that employer if:

A. The employee is not a resident of this State and was not hired in this State; [1995, c. 70, §1 (NEW) .]

B. The employer does not have a permanent place of business in the State; [1995, c. 70, §1 (NEW) .]

C. The employee's presence in this State for purposes of conducting employment activities does not exceed any of the following periods:

(1) Five consecutive days;

(2) Ten days in any 30-day period; or

(3) Thirty days in any 360-day period; [1995, c. 70, §1 (NEW) .]

D. The employer and employee are covered by the provisions of the workers' compensation laws or similar laws of the other state and that law applies to them while they are working in this State; [1995, c. 70, §1 (NEW) .]

E. The employer has furnished workers' compensation insurance coverage under the workers' compensation laws or similar laws of the other state so as to cover the employee's employment while in this State; [1995, c. 70, §1 (NEW) .]

F. The extraterritorial provisions of this Act covering employees in this State temporarily working in the other state are recognized in the other state; and [1995, c. 70, §1 (NEW) .]

G. Employers and employees covered in this State are exempt from the application of the workers' compensation laws or similar laws of the other state under legislation comparable to this section. [1995, c. 70, §1 (NEW) .]

[1995, c. 70, §1 (NEW) .]

2. Other state's laws prevail. If the exemption provided in subsection 1 applies, the workers' compensation laws or similar laws of the other state are the exclusive remedy against the employer in that state for any injury, whether resulting in death or not, received by an employee while working for that employer in this State.

[1995, c. 70, §1 (NEW) .]

3. Certificate of compliance. A certificate from a duly authorized official of the workers' compensation board or similar department or agency of the other state certifying that an employer is insured in that other state and has provided extraterritorial coverage insuring the employer's employees while working within this State is prima facie evidence that the employer carries such compensation insurance.

[1995, c. 70, §1 (NEW) .]

4. Reciprocal agreements. The board may enter into reciprocal agreements with workers' compensation agencies of other states adopting legislation similar to this section to ensure efficient administration of the Act.

[1995, c. 70, §1 (NEW) .]

SECTION HISTORY

1995, c. 70, §1 (NEW) .

§114. INDEPENDENT CONTRACTOR STATUS FOR TRUCKERS AND COURIERS

(REPEALED)

SECTION HISTORY

2011, c. 176, §1 (NEW). 2011, c. 643, §14 (AFF). 2011, c. 643, §10 (RP) .

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